



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	70494.6 (M-16842-4P US)	8032
32605	7590	01/24/2011		
Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas, TX 75219			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 01/24/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,376	Applicant(s) OLIN ET AL.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-13,15,17-24 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-9,11,12,17-21,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,10,13,22 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/20/2010 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 10, 13, 22, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Document No. 11-59701 to Nakagome et al. and U.S. Patent No.6,007,246 to Kinigakis et al.

Nakagome et al. discloses a bag comprising a top end having a seal, a bottom end, first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge is straight and has a non-gusseted portion located proximate to the top end, the first side edge forming an acute included angle with the top end at seal (7) and being substantially perpendicular to and longer than the

Art Unit: 3782

bottom end. A pour spout is located along the non-gusseted portion and oriented substantially parallel to the first side edge to provide access to an opening. However, Nakagome et al. does not show the bottom end having a generally ovoid shape. Kinigakis et al. discloses that it is known in the art of dispensing bags to provide a bottom end that is generally ovoid in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of Nakagome et al. with the ovoid-shaped, bottom end of Kinigakis et al., in order to permit the bag to rest in an upright position.

Furthermore, Nakagome et al. discloses the claimed device, as discussed above. Nakagome et al. especially discloses the pour spout and opening being initially accessed by a tear strip that is parallel to the first side edge. However, Nakagome et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed. Providing the pour spout of Nakagome et al. with the reclosable, zipper fastener of Kinigakis et al., as discussed above, meets the recitation "a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an included angle of less

than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position”.

Response to Arguments

4. Applicant's arguments filed 12/20/2010 have been fully considered but they are not persuasive.

In response to applicant's argument that the Examiner's suggestion not only would change the principles of operation of both Nakagome's and Kinigakis's respective inventions, the resulting device would be satisfactory for use for neither Nakagome's nor Kinigakis's respective purposes, applicant is reminded that, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, Kinigakis suggests to a person having ordinary skill in the art that it is desirable to provide a reclosable, zipper fastener in the pour spout of a dispensing bag.

Applicant's argument that Nakagome's tear strip is no longer a convenient means of breaking the heat seal, as Kinigakis's reclosable, zipper fastener introduced by the Examiner would now maintain the heat seal is unsupported opinion. There is nothing in Nakagome that explicitly states the heat seal would be rendered unbreakable by the introduction of a reclosable, zipper fastener. As stated above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the

Art Unit: 3782

structure of the primary reference. The Examiner maintains Kinigakis suggests to a person having ordinary skill in the art that it is desirable to provide a reclosable, zipper fastener in the pour spout of a dispensing bag, in order to permit the dispensing opening to be reclosed.

Applicant argues that the combination of Nakagome's and Kinigakis's teachings would not result in a corner pouring spout that satisfies the 25° to 65° angular requirement of Kinigakis. However, applicant ignores the teaching that Kinigakis clearly discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). As discussed above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis, in order to permit the opening to be reclosed. The modified Nakagome bag would inherently result in a pour spout having a reclosable fastener being substantially vertical when the bag is placed in a generally upright position. As stated above, the test for obviousness is not that the claimed invention must be expressly suggested in any one or all of the references. Applicant's argument that implies Kinigakis must anticipate applicant's claimed invention in order to modify Nakagome is improper where the rejection of the claims is based upon what the combined teachings of the Nakagome and Kinigakis references would have suggested to those of ordinary skill in the art.

Conclusion

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: “The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims “define a patentable invention” without specifically pointing out how the language of the

Art Unit: 3782

claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/723,376

Page 8

Art Unit: 3782

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/

Primary Examiner, Art Unit 3782